

2

No. 90-393

SEP 27 1990
JOSEPH E. SPANGLER
CLERK

In The
Supreme Court of the United States
October Term, 1990

THE CITY OF DeSOTO, TEXAS, et al.,

Petitioners,

v.

DOUGLAS MORGAN, et al.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO A
PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

DOUGLAS R. LARSON
3939 Highway 80
Suite 100
Mesquite, Texas 75150
(214) 686-6441

Counsel for Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

QUESTIONS PRESENTED

Petitioners claim the following issues should be considered by the Supreme Court. It is the Respondent's position that none of them merit review by the Supreme Court.

1. Upon reviewing *de novo* a law enforcement officer's entitlement to qualified immunity under § 1983, may a federal court of appeals disregard the Supreme Court precedent established by *Harlow v. Fitzgerald*, 457 U.S. 800 (1982) and *Anderson v. Creighton*, 483 U.S. 635 (1987), which requires that a court examine not only the applicable law at the time of the event in question, but also whether that law was clearly established?

2. To be entitled to qualified immunity in a § 1983 warrantless false arrest case, must a law enforcement officer demonstrate that the existence of actual probable cause, rather than "arguable" probable cause, was necessary for the arrest to have been objectively reasonable?

LIST OF PARTIES

1. The ten Petitioners herein, Defendants-Appellees below, are the City of DeSoto, Texas, Kenneth Hood, Stanley Joe O'Briant, Norman Agee, Dennis Kruse, J. T. Henrise, Earl D. Musser, J. Zihlman, W. Ransom and Boyd Norton.
2. The six Respondents herein, Plaintiffs-Appellants below, are Douglas Morgan, Kerry Curby, Troy Hall, Lisa Blair Bishop, Kathy Kuehler and Jeffrey Scott Escue.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	1
COUNTER-STATEMENT OF THE CASE	2
REASONS FOR DENYING THE WRIT	11
I. PETITIONERS HAVE NO STANDING TO RAISE QUALIFIED IMMUNITY AS A DEFENSE	11
II. THE COURT OF APPEALS HAS NOT DISRE- GARDED ANY SUPREME COURT AUTHOR- ITY BUT HAS MERELY CONCLUDED THAT A FACTUAL CONTROVERSY EXISTS ON THE ISSUE OF QUALIFIED IMMUNITY WHICH HAS PRECLUDED SUMMARY JUDGMENT	12
III. THERE IS NO CONFLICT AMONG THE CIR- CUITS	14
IV. PETITIONERS ARE MAKING UNREASON- ABLE CLAIMS OF QUALIFIED IMMUNITY...	15
CONCLUSION	17

TABLE OF AUTHORITIES

Page

CASES

<i>Anderson v. Creighton</i> , 483 U.S. 635 (1987)	13
<i>Brandon v. Holt</i> , 469 U.S. 464 (1985)	12
<i>Floyd v. Farrell</i> , 765 F.2d 1 (1st Cir. 1985)	14
<i>Gorra v. Hanson</i> , 880 F.2d 95 (8th Cir. 1989)	14
<i>Harlow v. Fitzgerald</i> , 457 U.S. 800 (1982)	12
<i>Henry v. U.S.</i> , 361 U.S. 98 (1959)	14
<i>Mitchell v. Forsyth</i> , 472 U.S. 511 (1985)	12
<i>Monell v. Dept. of Social Services</i> , 436 U.S. 658 (1978)	11
<i>Owens v. City of Independence</i> , 445 U.S. 622 (1980) .11, 12	
<i>Vonstein v. Brescher</i> , 904 F.2d 572 (11th Cir. 1989)	14

CONSTITUTIONAL PROVISIONS

United States Constitution

Fourth Amendment	<i>passim</i>
Fourteenth Amendment	<i>passim</i>

STATUTORY PROVISIONS

42 U.S.C. § 1983	12
Tex.Penal Code Ann. Art. 30.05 (Vernon 1989) ...	7, 13, 16

In The
Supreme Court of the United States
October Term, 1990

THE CITY OF DeSOTO, TEXAS, et al,
Petitioners,
v.

DOUGLAS MORGAN, et al,
Respondents.

**RESPONDENT'S BRIEF IN OPPOSITION TO A
PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT**

OPINIONS BELOW

The opinion of the District Court is not reported but is reproduced in the Petitioner's appendix pages App. 14 through App. 19. The opinion of the Court of Appeals for the Fifth Circuit is reported at 900 F.2d 811.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

COUNTER-STATEMENT OF THE CASE

This cause arises from several arrests which occurred shortly after 10:00 p.m. on May 3, 1985 on shopping center parking lots in the City of DeSoto, Texas. DeSoto does not have a traditional downtown retail area but rather the majority of its retail businesses are located along Hampton Road in shopping centers surrounded by large parking lots. The arrests in question resulted from the activity of driving automobiles by young persons up and down Hampton Road. This activity was referred to as "cruising" and was most "active" on warm weather Friday and Saturday nights, although some "cruising" apparently occurred on every night. Some business owners and operators complained to DeSoto City Council of litter and isolated acts of vandalism. There is no evidence that any of the Respondents were either guilty of littering or vandalism, nor does the record contain evidence that even a majority or a significant number of the "cruising" young people were either vandals or significantly contributed to the littering.

Responding to the complaints, The DeSoto City Council directed Director of Public Safety, Stanley O'Briant, and its police chief, Kenneth Hood, who in turn directed Lt. Dennis Kruse to formulate a plan and a time for the mass arrest of anyone who was found on any shopping center parking lot. The date and the time of the arrests was left to the discretion of Kruse, but it is apparent that May 3, 1985, was chosen because it was a Friday night and a Friday night would likely result in the greatest impact. All of these arrests were elaborately planned and executed. Virtually the entire DeSoto Police Department was involved as well as members of the Dallas

County Sheriff's Department and other law enforcement agencies. The plan formulated by Kruse required that shortly after 10:00 p.m. for the police in a coordinated manner to surround, overwhelm, and arrest for criminal trespass any person found on any shopping center parking lot. Somewhere between forty-six (46) and fifty-eight (58) individuals were arrested. Since it was predetermined that each arrest would be for criminal trespass, the police reports had been mass produced and prepared in advance except for the name, address, etc. Each report identically described an arrest of an individual for criminal trespass.

The arrestees were placed in jail facilities designed for far fewer individuals than were arrested. Each arrestee, including the Respondents, were herded like cattle through the overwhelmed and overcrowded DeSoto Police Department booking procedures. Each arrestee was taken before a DeSoto City Magistrate who merely advised each arrestee of the reason for the arrest. By plan, no attempt was made by the Magistrate to independently evaluate the probable cause for any arrest or even to set bail. The arrestees were then held in the overcrowded DeSoto jail cells until they were transferred to the larger Dallas County Jail several miles away. None of the arrested persons were allowed access to a telephone for several hours after their arrests and then only after they were transferred and rebooked into the Dallas County Jail. Morgan, Escue, Curby and Hall were not given access to a telephone until about 9:00 a.m. the following morning after their arrests. Respondents Blair Bishop and Kuehler were given phone access approximately four to five hours after their 10:00 p.m. arrest.

While arrests occurred on several parking lots, the Plaintiffs were arrested on two (2) different shopping center parking lots. Their respective arrests occurred simultaneously within seconds or minutes of one another. The setting for arrest of the Respondents is as follows:

The arrest of Respondents Morgan, Hall, Curby and Escue: On May 3, 1985, near 10:00 p.m., Douglas Morgan, in the company of Troy Hall, Kerry Curby drove his pickup truck north on Hampton Road. Morgan, Hall and Curby had jointly agreed to purchase a meal at a drive through fast-food establishment known as the "Jack in the Box". This establishment also had facilities that would allow a patron to eat a meal on site. The "Jack in the Box" outwardly appears to be a part of a large shopping center named the Pleasant Run Village Shopping Center. This shopping center covers an entire city block and extends from Pleasant Run Road on the south to Woodhaven on the north. The "Jack in the Box" is located on the west side of Hampton and southern most part of this shopping center on the corner of Hampton Road and Pleasant Run Road. Morgan approached this location from the south but a raised concrete traffic median between the north and south bound lanes of Hampton Road prevented him from lawfully or physically turning directly left into the "Jack in the Box". Rather MORGAN was required to go to the next intersection, (Hampton Road and Woodhaven Drive) and execute a left turn on Woodhaven Drive and then immediately execute another left turn onto the Pleasant Run Village Shopping Center parking lot. (MORGAN could not lawfully execute a U-turn on Hampton Road because there was a sign indicating that a "U-turn" was legally prohibited.) On the

Pleasant Run Shopping Center parking lot and adjacent and parallel to Hampton Road there was a paved roadway which had been designated with a north and south bound traffic lane. This paved strip led directly to the "Jack in the Box". On this evening, it was MORGAN'S intention to drive to the "Jack in the Box" by using this shopping center roadway as the route to the "Jack in the Box." Until May 3, 1985, this roadway had been universally used and accepted as a route to this eating establishment. There were no fences, enclosures, barricades or signs which indicated that this route was either unacceptable or unlawful. Shortly after MORGAN had turned his vehicle onto this paved strip, DeSoto Police Lieutenant DENNIS KRUSE blocked the Plaintiff's pickup with a DeSoto police cruiser. KRUSE then ordered MORGAN, HALL and CURBY out of MORGAN'S vehicle. KRUSE was shortly thereafter joined by DeSoto officers EARL MUSSER and J.T. HENRISE. MUSSER KRUSE and HENRISE then placed MORGAN, HALL and CURBY under arrest and tied their hands behind their backs and required them to seat themselves on the ground of the parking lot. Very shortly thereafter JEFFREY SCOTT ESCUE was likewise arrested for following MORGAN in his vehicle with the intent to use the same route to go to the same "Jack in the Box" as MORGAN had intended in his vehicle. After a short while, MORGAN, HALL, CURBY, ESCUE and several other similarly arrested individuals were taken by paddy wagon to the DeSoto City jail.

The arrest of Respondents KUEHLER and BLAIR BISHOP; Earlier in the evening of May 3, 1985, KATHY KUEHLER and LISA BLAIR BISHOP had participated in

a girl's softball tournament in the City of DeSoto. Both KUEHLER and BLAIR BISHOP were high school seniors at a Dallas County suburb located in Grand Prairie, Texas. Before this evening, neither had ever been in DeSoto and both were unfamiliar with DeSoto or its purported "cruising" problem. Both of these young women were clothed in their softball uniforms. After the softball tournament, followed by a short meeting, KUEHLER and BLAIR BISHOP, at about 9:30 p.m. and in the company of two other young ladies, left the softball field in BLAIR BISHOP'S automobile to locate a place to eat. They first attempted to eat at a restaurant but because it was too crowded, elected instead to go to a convenience store and purchase snacks and cold drinks. After leaving the convenience store, these young ladies noticed that they were being followed by a group of young men in a pickup truck who were attempting to gain their attention. Plaintiff BLAIR BISHOP pulled her vehicle into the Hampton Square Shopping Center parking lot, located at 719 N. Hampton, to attempt to learn what the young men wanted. The young men in the pickup truck drove into the shopping center nearby the BISHOP vehicle and the Plaintiffs and the young men exchanged greetings and names. Before any further conversation could transpire, DeSoto Police Officer ZIHLMAN in the company of Officer NORTON, and LT. KRUSE and other unidentified DeSoto police officers, blocked BLAIR BISHOP'S vehicle with a DeSoto police cruiser. The officers ordered all the occupants out of BLAIR BISHOP'S vehicle and arrested and handcuffed all of them. Later they were all taken to the DeSoto City Jail.

After these arrests took place as well as several others, each arrestee was prosecuted for criminal trespass. Not all of the persons arrested on the shopping center parking lots stood trial, but all faced trial. The Dallas County District Attorney tried three (3) different groups of young persons, but each trial ended in acquittal. This included the trial of the criminal trespass charges brought against KUEHLER and BLAIR BISHOP. One of other trials involved persons who were arrested under similar circumstances on the same parking lot as MORGAN, HALL, CURBY and ESCUE. After these trials, the District Attorney determined that he could not obtain convictions and on his motion dismissed all of the remaining charges of criminal trespass, including the charges lodged against MORGAN, HALL, CURBY and ESCUE. The apparent reason that the District Attorney could not obtain convictions was because he could not convince any juror in any of the respective trials that the persons arrested on May 3, 1985 for criminal trespass had "notice" as defined by the Texas Penal Code.

Article 30.05 of the Texas Penal Code defines criminal trespass thusly:

§30.05 Criminal Trespass

- (a) A person commits an offense if he enters or remains on property or in a building of another without effective consent and he:
 - (1) had notice that the entry was forbidden; or
 - (2) received notice to depart but failed to do so.

(b) For purposes of this section:

- (1) "entry" means the intrusion of the entire body; and
- (2) "notice" means:
 - (A) Oral or written communication by the owner or someone with apparent authority to act for the owner;
 - (B) fencing or other enclosure obviously designed to exclude intruders or to contain livestock; or
 - (C) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden.

In the District Court the individual police officers defended by asserting that they had probable cause to arrest and this factor entitled them to "qualified immunity". The Plaintiffs insisted that the "notice" was clearly insufficient and that their arrest and/or prosecutions took place without probable cause.

"Notice" at the Pleasant Run Village Shopping Center affecting MORGAN, HALL, CURBY and ESCUE: On May 3, 1985, there was not a sign indicating "no trespassing" at the entry of the Pleasant Run Village Shopping Center used by Respondents. The nearest sign facing in the direction of travel to the entrance where MORGAN, HALL, CURBY and ESCUE entered the Pleasant Run Village Shopping Center was 182 feet away. This sign was hanging on the bottom of a large sign listing the

businesses in the shopping center; it was 18" x 18" and the letters were 11/16" high. In daylight it wasn't possible to be read from the distance of 182 feet, darkness even further obscured the sign. If a car was parked near this sign, it would block the view of the sign. Another sign was hanging under the eaves of a store measuring 12" x 12" and was 39 feet up the roadway. In daylight this sign was not visible unless one faced it directly by pulling into a parking space. In the dark, it could not be seen because of a glare from the store lights. In order to see the sign by using the same route as MORGAN and ESCUE, it would have required them to stop 39 feet after entering the lot, turn their heads to the right (west). Even if this occurred the lettering on this sign was too small to be legible.

The message on the signs at the Pleasant Run Village Shopping Center was:

No Trespassing, these premises are for Pleasant Run Shopping Center customers and Tenants only. Entry to the lot by all other persons is prohibited. Violators will be prosecuted under 30.05 of the Texas Penal Code.

Because MORGAN, CURBY, HALL and ESCUE were destined for the "Jack in the Box" they were arguably customers of the Pleasant Run Village Shopping Center because the "Jack in the Box" outwardly appears to be part of this shopping center. There was written agreement among the respective owners of the Jack in the Box property and the Pleasant Run Village Shopping Center that travel between the properties would not be impeded by either party in any way. The property manager of the Pleasant Run Shopping Center testified in two of the

criminal trials that as long as the Respondents were traveling to the "Jack in the Box" they were not in violation of the law or the "no trespassing signs". DeSoto Police Officers Musser, Kruse, Henrise, Ransom, and Smith, agreed that the Pleasant Run Village Shopping Center parking lot could be lawfully used as a "short cut" to the "Jack In the Box" restaurant. DeSoto Officers Henrise and Smith admitted that it does appear that the Pleasant Run Village Shopping Center includes the "Jack In The Box".

"Notice" at the Hampton Square Shopping Center affecting the arrests of BLAIR BISHOP: Signs on this lot measured 12" x 12" and were placed 15-20 feet off the ground. These factors made them illegible and even more so at night. None of the signs were placed at an entrance. The signs read:

"No trespassing these premises are for Hampton Square Shopping Center Patrons only. Loitering and littering are prohibited by law and violators will be prosecuted under 30.05 of the Texas Penal Code."

All of these signs faced away from Hampton Road toward the center of the five acre parking lot. In order to be in a position to potentially read any of these signs, a person would have to be on the shopping center parking lot, making it necessary to be a "trespasser" before one had notice that a violation of the law was taking place. On May 3, 1985, there were no signs, fences or other devices advising anyone that entry to this shopping center parking lot was forbidden.

REASONS FOR DENYING THE WRIT

I. PETITIONERS HAVE NO STANDING TO RAISE QUALIFIED IMMUNITY AS A DEFENSE.

Petitioners are claiming entitlement to defense of qualified immunity that is not supported by established precedent. Nor are Petitioners requesting the Supreme Court to overrule or reconsider established precedent. Since *Monell v. Dep't. of Social Services*, 436 U.S. 658 (1978), and undoubtedly since *Owens v. City of Independence*, 445 U.S. 622 (1980) the right to claim the benefit of what was previously referred to as the "good faith" defense, now the qualified immunity defense is reserved only for individuals acting in their individual capacity and not for municipalities. Therefore the City of DeSoto has no standing to assert the defense and no standing to seek review for claims of qualified immunity by Certiorari. Additionally, on page 5 of their Petition for Certiorari, Petitioners make the following assertion:

Plaintiffs, Respondents herein, were arrested either at the Pleasant Run Village Shopping Center or the Hampton Square Shopping Center parking lots after 10:00 p.m. on May 3, 1985, by police officers who were acting under color of state law, *in their official capacities as City of DeSoto police officers at the time of the arrests.* (Emphasis supplied)

The above emphasized quote is not contradicted elsewhere in their petition. If one is to believe what is carefully written by petitioners' counsel, then the DeSoto Police are seeking review by Certiorari only for the actions taken by them in their official capacity. If this is the case, then the police have no more standing than the

City of DeSoto because a § 1983 claim against an individual acting in his official capacity is in actuality a claim against his governmental employer. *Brandon v. Holt*, 469 U.S. 464 (1985). If a City cannot claim the benefit of the qualified immunity defense, *Owens v. City of Independence, supra*, then individuals acting in their official capacity cannot either. The rationale in not allowing the defense to local government remains the same regardless of the subsequent alterations in the defense of "immunity" found in the decisions of *Harlow v. Fitzgerald*, 457 U.S. 800 (1982) and *Mitchell v. Forsyth*, 472 U.S. 511 (1985), and their progeny.

The knowledge that a municipality will be liable for all of its injurious conduct, whether committed in good faith or not, should create an incentive for officials who may harbor doubts about the lawfulness of their intended actions to err on the side of protecting citizens' constitutional rights. Furthermore, the threat that damages might be levied against the city may encourage those in a policy-making position to institute internal rules and programs designed to minimize the likelihood of unintentional infringements on constitutional rights. Such procedures are particularly beneficial in preventing those "systemic" injuries that result not so much from the conduct of any single individual, but from the interactive behavior of several government officials, each of whom may be acting in good faith. *Owen v. Independence* at 445 U.S. at 651.

II. THE COURT OF APPEALS HAS NOT DISREGARDED ANY SUPREME COURT AUTHORITY BUT HAS MERELY CONCLUDED THAT A FACTUAL CONTROVERSY EXISTS ON THE ISSUE OF QUALIFIED IMMUNITY WHICH HAS PRECLUDED SUMMARY JUDGMENT.

The Court of Appeals for the Fifth circuit has fully complied with *Harlow v. Fitzgerald*, 457 U.S. 800 (1982)

and *Anderson v. Creighton*, 483 U.S. 635 (1987) and has disregarded neither. The law governing arrests is clearly established as it is governed by Fourth Amendment principles involving probable cause and reasonableness. In the District Court the DeSoto Police claimed that they had probable cause to arrest the Respondents and effectively took the position that if "no trespassing" signs existed anywhere on the shopping center parking lots regardless of placement, size or message, they would be entitled to immunity from suit. Unfortunately the District Court brought this dubious position but in doing so made no finding that the signs were "reasonably likely to come to the attention of intruders" and ignored that any factual controversy over this issue existed. Now that the Court of Appeals for the Fifth Circuit has reversed the District Court, the police now claim that if they did not have probable cause, they must have had "arguable" probable cause. This position was not squarely presented by them to the Court of Appeals for the Fifth Circuit and for this reason alone their Petition for Certiorari on should be denied.

The statute (Texas Penal Code Art. 30.05) on which the police base their arrest of the Respondents requires that a "no trespassing" sign "be reasonably likely to come to the attention of intruders." The Court of Appeals for the Fifth Circuit concluded that:

Whether a reasonable officer could have concluded that there was a reasonable likelihood that these signs, or one of them, would come to the attention of an intruder, is a question of fact. We are unable to resolve this question on the summary judgment record before us. Aside from the question of whether, under all of these

circumstances, the signs would give reasonable notice to anyone driving upon or across the shopping center parking lot that they were excluded from doing so, the visibility of the signs and their messages cannot be determined. 900 F. 2d at 814-815.

Before any Appellate Court can properly consider this matter, factual findings concerning the reasonableness of the decision to arrest based on the reasonableness required by the statute concerning the placement as well as the content of the "no trespassing" signs, is required.

III. THERE IS NO CONFLICT AMONG THE CIRCUITS.

Nothing said or accomplished by the Court of Appeals for the Fifth Circuit in this cause indicates any conflict with either *Vonstein v. Brescher*, 904 F. 2d 572 (11th Cir. 1989) or *Gorra v. Hanson*, 880 F. 2d 95 (8th Cir. 1989) or *Floyd v. Farrell*, 765 F. 2d 1 (1st Cir. 1985). Actually these cases from the 1st, 8th and 11th Circuits turn not on the presence or absence of "arguable" probable cause but on the reasonableness under the respective circumstances of the actions of police in making arrests. In doing so, the First, Eighth, Eleventh Circuits as well as the Fifth Circuit have all applied the constitutional standard of reasonableness found in the Fourth Amendment. Probable Cause as found in the Fourth Amendment is defined in terms of the reasonableness of the actions taken. The Supreme Court has stated that the element of reasonableness inherent in the definition of probable cause "protects by the officer and the citizen". *Henry v. U.S.*, 361 U.S. 98

(1959). The Fourth Amendment itself strikes the appropriate balance between the need for effective law enforcement and the protection of citizens' privacy. This is accomplished by the joint resolution of both the presence "probable cause" and whether police conduct was "unreasonable." All of the circuit court opinions including the Fifth Circuit's opinion in this case applied these identical standards to the matters one respectively placed in front of them. The only thing different was the Fifth circuit concluded that the facts were in controversy and refused to decide the issue of immunity until the facts were resolved. In this matter questions of qualified immunity can only be resolved after the fact finder determines whether or not the signs which the Petitioners claim are adequate "no trespassing signs" meet the statutory standards. If the signs meet the statutory standards, then the police decision to arrest was either or both not "unreasonable" and made with "probable cause". Until these threshold questions concerning the signs are resolved by the fact finder, the Supreme Court should not grant Certiorari.

IV. PETITIONERS ARE MAKING UNREASONABLE CLAIMS OF QUALIFIED IMMUNITY.

The police position regarding their claims of qualified immunity is untenable. If one were to accept the police position that any sign would suffice, then according to Petitioners, it would then be reasonable for an officer to arrest a person in the middle of a ten mile square of unfenced land where there was a business card size "no trespassing sign" posted on a tree one mile away and completely opposite to the place and direction of travel of the supposed trespasser. Of course this is not

what was intended by the Texas Legislature when it enacted Penal Code Art. 30.05 nor should it be contemplated that the Fourth Amendment would sanction such an unreasonable act. The limitations that the Fourth Amendment places on the criminal trespass statute does not allow it to be read as a trap for the citizen who innocently travels across a shopping center parking lot to obtain a meal. Nor should the Fourth Amendment be allowed to use the criminal trespass statute to justify an arrest of a citizen who goes onto a shopping center parking lot in the presence of a small sign twenty feet high facing towards the center of the lot which forbids the citizens' presence on the lot but not his entry.

Here it is likely that the evidence is that none of the signs on either lot were "likely to come to the attention of intruders". The signs at both lots were not visible at the entrances from the adjacent streets, the signs were not lighted, and were either too far away and/or too high to be legible. On one of the lots a citizen is a trespasser even before the citizen is in a position to potentially read a sign. Obviously these signs were purposely placed and worded by the shopping center owners in a manner that intended that they be ignored and unnoticed. This is because if the signs were given their full effect and meaning they would subject everyone but an actual purchaser of merchandise to arrest. This is because the signs claim to allow the presence of only the customer or the patron on the respective properties. This would also mean that at any time of the day, a citizen who intended only to window shop or to browse would be subject to arrest. Additionally the arrest of the mailman, the deliveryman, the garbage man, and repairman would be sanctioned.

This would result in the police having probable cause to arrest anyone, anytime and the only way to avoid arrest would be to be seen in circumstances clearly indicating a purchase. Most assuredly, none of the DeSoto Police believe these signs should be used in this manner and most of them have admitted as much.

CONCLUSION

For the foregoing reasons, the petition for a Writ of Certiorari filed by petitioners City of DeSoto, et al should be denied.

DOUGLAS R. LARSON
3939 Highway 80
Suite 100
Mesquite, Texas 75150
(214) 686-6441

Counsel for Respondents